IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SECOND DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 4895 of 2005

Between:

K. Venkateswarlu S/o. K. Papaiah
R/o. 3/361, Arunachalam Street, Nellore.

..... PETITIONER

AND

A.P. State Financial Corporation Ltd., Rep. by its Managing Director,
Chirag Ali Lane, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of Mandamus, declaring the action of the respondent in not finalising the sale of assets of M/s. Bhagya Agro Oils (P) Ltd., pursuant to the Tender Notification dt. 19-10-2004 and receiving the offers even after the period stipulated for receiving the offers is over as arbitrary, illegal and contrary to the terms and conditions of the Tender Notification and issue a consequential direction to the respondent to finalise the sale of assets of M/s. Bhagya Agro Oils (P) Ltd., strictly in accordance with the terms and conditions of the Tender Notification dt. 19-10-2004.

Counsel for the Petitioner: MR.C.V.MOHAN REDDY

Counsel for the Respondent: MS.Y.N.LOHITA (SC FOR AP FINANCE CORP)

The Court made the following :

ORAL ORDER:

This writ petition is filed seeking a Mandamus to declare the action of the respondent in not finalizing the sale of assets of M/s.Bhagya Agro Oils Pvt. Limited, pursuant to the Tender Notification dated 19.10.2004 and receiving the offers even after the period stipulated for receiving the offers is over, as arbitrary, illegal and contrary to the terms of the Notification.

The brief facts that are necessary for the purpose of disposal of the writ petition are as follows:

The respondent issued a Tender Notification dated 19.10.2004 inviting applications for the sale of assets which include the land, buildings and machinery of M/s.Bhagya Agro Oils (P) Ltd., Narsingapuram. As per the terms and conditions mentioned in the Tender Notification, the advertisement is valid for a period of 90 days and before the expiry of the said period, the respondent will finalize the sale among the offers received by it. It is also mentioned in the terms that the tenderers will be invited for bidding/negotiations from 27.10.2004 and the bidding process will be concluded if more than one tenderer is present and further negotiations will be continued. It is further stated that the reasonable offer as per the discretion of the Committee will be placed on the notice board for a period of 7 days

during which time, further offers will be received on condition that 15% of the offer which should be more than the reasonable price displayed on the notice board shall be deposited along with the requisite Earnest Money Deposit (E.M.D). The petitioner made an offer to purchase the assets at Rs.47 lakhs on 27.10.2004. He was called for negotiations by the Sale Committee on 8.11.2004. He raised his offer to Rs.62 lakhs and the Committee finalized it. Accordingly, the offer made by him at Rs.62 lakhs was displayed on the notice board and thereafter, no further offers were received by the respondent within the stipulated period of 7 days. The respondent seems to have received an offer from the third party after the expiry of the stipulated period offering to pay higher price than what was offered by him. The Sale Committee once again invited the petitioner for negotiations in which he increased his offer to Rs.73 lakhs. On 5.1.2005, after elaborate discussions, he made final offer of Rs.74 lakhs against the Sale Committee's proposal to sell the property at Rs.75 lakhs. The tenderer who offered to purchase the property at Rs.66 lakhs withdrew from the bidding process after the Sale Committee expressed that the assets would fetch Rs.75 lakhs. The Sale Committee prevailed on him to agree to Rs.74 lakhs and a final agreement with regard to the mode of payment of money was also reached on 5.1.2005. The petitioner understood and believed the same to be true and the matter was placed before the Managing Director whose approval was also obtained, thereafter, the proposal was sent to co-financiers like A.P.I.D.C. for their consent. He understood that A.P.I.D.C also approved the same. But, to his utter shock, he received a communication, dated 21.2.2005 asking him to attend a meeting for negotiation in view of the subsequent offer received from the third party offering to purchase the property at Rs.80.01 lakhs. He sent a communication on 24.2.2005 by fax protesting against the procedure being followed by the respondent, however, informing to attend the meeting at a later date. The action of the respondent in not finalizing the bids, keeping the bidding process open, receiving offers even after the last date is over and calling for re-negotiations, is arbitrary and contrary to the terms and conditions

stipulated in the Tender Notification. The respondent, in utter disregard to the terms and conditions has been receiving offers even after the time fixed in the notification is over and even after the lapse of nearly 5 months. Hence, the writ petition has been filed.

The respondent filed a detailed counter affidavit stating that the action of the respondent is neither arbitrary nor illegal. The petitioner is not effecting any legal right much less an enforceable right enabling him to approach this Court. The respondent-Corporation has released an advertisement inviting the offers for the purchase of assets for sale belonging to the defaulting unit. After release of advertisement, the Sale Negotiations Committee held its meeting with the tenderers on several dates. The petitioner failed to attend the meetings on 24.2.2005 and 7.3.2005 respectively. Therefore, the petitioner was duly informed to attend the meeting on 14.3.2005 at 3.00 P.M. to proceed with the consideration and finalization of the tenders received. The Corporation has effected the sale under the provisions of the State Financial Corporations Act, 1951 (for brevity “The Act”) and the action taken by the respondent is in accordance with the provisions of the Act. The respondent issued Office Order bearing No.AMC/231, dated 19.2.2005 providing for accepting the offer and to conduct negotiations therein which were received after the stipulated period of 90 days, but before the issuance of sale confirmation letter in favour of the highest bidder. Therefore, the action taken by the respondent is in accordance with law. It is further stated that M/s.Bhagya Agro Oils Pvt. Ltd., was jointly financed by the respondent, A.P.I.D.C and the State Bank of India and that M/s.A.P.I.D.C and the respondent have a pari-passu charge. M/s.APIDC and the respondent are due and payable a sum of Rs.750.00 lakhs and Rs.608.56 lakhs respectively by the company as on 31.10.2004. The loanee company has gone into liquidation and the respondent is seeking to effect the sale of its assets by obtaining permission from the company Court. The respondent-Corporation is obligated in law to obtain the best possible price for the assets offered for sale. The A.P.I.D.C is to communicate its

concurrence with regard to the offer made by the petitioner. It is therefore, denied that the claim made by the petitioner with regard to the approval granted by A.P.I.D.C is factually incorrect. The petitioner is registering his protest without basis. The petitioner was called upon to attend the meeting on 24.2.2005. Therefore, the same was adjourned to 14.3.2005. An adequate opportunity was provided to the petitioner and his associates to attend the meeting on 14.3.2005 and in the event of the petitioner's failure to attend the same, the respondent will be left with no alternative but to proceed with the consideration and finalization of tenders. Hence, the respondent prays to dismiss the writ petition.

Heard the learned counsel for the petitioner and the learned standing counsel for A.P. Finance Corporation and perused the material on record.

The learned counsel for the petitioner has contended that the petitioner offered to purchase assets at Rs.47 lakhs, but in view of the negotiations, he raised it to Rs.62 lakhs and the same was finalized by the Committee and also displayed on the notice board. There is arbitrary action on the part of the respondent in not finalizing the offer especially when no further offers were received by the respondent within the stipulated period of 7 days. He has further contended that after expiry of 7 days, some third party offered to pay higher amount and then, the petitioner raised his offer to Rs.75 lakhs, and the third party which offered to purchase the property at Rs.66 lakhs withdrew from the bidding process. He has further contended that finally, the agreement with regard to the mode of payment of money was also reached on 5.1.2005 and the co-financier also approved the same, but to the utter disregard to the terms and conditions, the respondent is not finalizing the sale. Therefore, he prays to allow the writ petition.

On the other hand, the learned standing counsel for the respondent has contended that the offer made in the negotiations has not been accepted by the respondent. The respondent is taking action in accordance with the provisions of the Act. The intention of the

Corporation is to obtain a best possible process for the assets for sale and that in pursuance of the circular instructions issued by the Managing Director, an opportunity can be given to the late tenderers for receipt of public offers. Though the time stipulated for receipt of fresh tenders is 7 days, the same has to be considered before the issue of sale confirmation letter, but the sale confirmation letter is not being issued to the petitioner. Since his offer is not accepted, he cannot have any enforceable right so as to seek for mandamus and hence, he prays to dismiss the writ petition.

It is not in dispute that the respondent-Corporation issued a Tender Notification, dated 19.10.2004 inviting tenders for the sale of assets which include the land, buildings and machinery of M/s.Bhagya Agro Oils (P) Ltd.. One of the terms and conditions of the Tender Notification is that the advertisement is valid for a period of 90 days from the date of issuance of the notification, and during 90 days' period, satisfactory offers received may be finalized. The tenderers will be invited for bidding/negotiations on every Wednesday or any other suitable day commencing from 21.10.2004. Other intending tenderers also can participate on Wednesday/other suitable days along with sealed tenders and requisite E.M.Ds. The bidding will be conducted when more than one tenderer is present and further negotiations will continue. The reasonable offer (as per the discretion of the Committee) will be placed on the notice board for 7 days. During these 7 days, new tenderers may file sealed tenders with requisite E.M.Ds. and additional deposit of 15% of the offer which they quote in the tender, and on receipt, further bidding/negotiations will be conducted between the existing and the new tenders and offer will be confirmed after approval of the competent authority. All other terms and conditions enclosed to the tender form are binding and to be complied with.

It is also made clear that the Corporation deserves right to accept/reject the tenders/bids or vary the terms and conditions at the

sole discretion without assigning any reasons.

A perusal of the above tender conditions would reveal that if no tenders are offered within 7 days, there is no indication that the offer made by the tenderer whose offer was placed on the notice board would be accepted. On receipt of further bidding or negotiations, the offer will be confirmed after approval of the competent authority. It is stated by the petitioner that the offer of Rs.74 lakhs in the negotiations was placed before the Managing Director, who approved the same. Thereafter, the proposal was sent to the co-financier A.P.I.D.C for their consent. The petitioner also understood that A.P.I.D.C also approved the sale but the said fact was denied. In the counter affidavit, it is stated that A.P.I.D.C is yet to communicate its concurrence with regard to the offer made by the petitioner. The allegation that A.P.I.D.C approved the offer of the petitioner is denied. The Corporation also reserves the right to accept or reject the tenders/bids or vary the terms and conditions at its sole discretion without assigning any reasons. When such a right is reserved by the Corporation, it cannot be said that the respondent is acting arbitrarily. There cannot be any dispute that the respondent-Corporation is statutorily obligated to obtain best possible process for the assets offered for sale and they can take their own decision with regard to the sale of assets depending upon the advanced loan amount due to the Corporation by the loanee and the market value of the sale of the assets of the defaulting unit. On this aspect, the learned counsel for the respondent has placed a strong reliance on the decision reported in **U.P. FINANCIAL CORPN. AND Vs. NAINI OXYGEN & ACETYLENE GAS LTD.** wherein it is held to the following effect:

> *"However, we cannot lose sight of the fact that the Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such, in the discharge of its functions, it is free to act according to its own light. The views it forms and the decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision taken by it is not open to challenge. It is*

not for the courts or a third party to substitute its decision, however more prudent, commercial or businesslike it may be, for the decision of the Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable."

From the above decision, it is clear that unless the action of the respondent is *mala fide,* even a wrong decision taken by the Corporation is not open to challenge. In the affidavit, that no *mala fides* are attributed to any of the officers of the respondent-Corporation. Therefore, in the absence of any factual foundation with regard to the *mala fides*, the action of the respondent cannot be challenged. In my considered opinion, the respondent has not acted contrary to the terms and conditions of the Tender Notification. One of the terms and conditions of the notification also made clear that as per the discretion of the committee, the reasonable offer will be displayed on the notice board for a period of 7 days. If no offer is raised within a period of 7 days, there is no indication that that the offer made by the tenderer whose offer was placed on the notice board would be accepted. The specific case of the petitioner is that in pursuance of the negotiations held on 8.11.2004 he raised his offer to Rs.62 lakhs and the same was finalized by the Committee and displayed on the notice board. Though the same is not specifically denied, there is no other material to show that the offer of the petitioner for Rs.62 lakhs was the reasonable offer and the committee exercised its discretion so as to place the reasonable offer on the notice board for a period of 7 days. The discretion is given to the committee to place the matter on the notice board and that does not mean if no other tender is received within the stipulated period of 7 days, the offer raised and displayed on the notice board is accepted without there being any further communication of acceptance of the offer from the respondent. Since the petitioner failed to show that the committee accepted the offer made by the petitioner and the same was confirmed by the Managing Director and other co-financiers of the respondent, the petitioner cannot have any enforceable legal right

to challenge the action of the respondent. It is for the respondent to take appropriate decision with an intention to secure best possible process for the assets offered for sale. Therefore, I am of the opinion that this Court is not competent to substitute its decision, but it is for the Corporation to take appropriate decision.

Having regard to the facts and circumstances of the case, there is no enforceable right for the petitioner to direct the respondent to finalize the sale of the assets in view of the fact that his offer has not been so far accepted by the respondent or its co-financiers.

The writ petition is devoid of merits and is accordingly dismissed. In the circumstances of the case, there shall be no order as to costs.

(K.C. BHANU, J.)

22nd March, 2005

bcj

To

1 The Managing Director, A.P. State Financial Corporation Ltd.,
Chirag Ali Lane, Hyderabad.

2 Two C.D. copies.